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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,782	07/21/2003	George P. Frysinger	316678	4257

35657 7590 06/29/2006

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PATENT DOCKETING
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EXAMINER

CHAVIS, JOHN Q

ART UNIT	PAPER NUMBER
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2193

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,782

Applicant(s)

FRYSINGER ET AL.

Examiner

John Chavis

Art Unit

2193

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>02/10/04</u> | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by
Roediger et al. (5,960,198).

What is claimed is:

1. A method for instrumenting software
For use in an object-oriented
environment, comprising:

receiving compiled application code;

instrumenting the compiled application
code,

instrumenting including adding code to
turn features of instrumentation ON and
OFF;

loading the instrumented code; and

executing the loaded code.

2. The method of claim 1, wherein
instrumenting includes adding a collector
object and a plurality of instrument data
structure objects.

3. The method of claim 2, further
comprising: registering a list of methods
in the collector object;

Roediger

See The title and the abstract.
Also, see item 17 of fig. 1 and
item 40 of fig. 3.

See item 23 of fig. 1.

See item 32 of fig. 3.

See items 44, 46 and 48
of fig. 3, col. 2 lines 50-62 and
col. 3 lines 3-19.

This feature is inherent via the
executing step below.

See item 52 of fig. 3.

See col. 2 lines 1-8, col. 2 lines
37-42 and col. 3 24-28.

These features are inherent in
the cited portions of claim 2 to
enable profile data to be

collected and later utilized for multiple independent benchmarks.

associating a selected one of the plurality of instrument data structure objects with a selected method in the list of methods;

and registering the selected instrument data structure object in the collector object.

4. The method of claim 1, wherein instrumenting is selective, based on a predetermined description.

" " " "

5. The method of claim 4, wherein the predetermined description is indicative of at least one method to be instrumented.

" " " "

6. The method of claim 4, wherein the predetermined description is indicative of at least one class to be instrumented.

" " " "

Claims 7-8, 14-16, and 20-21 are rejected as claim 1.

As per claims 9-13, see col. 8 lines 19-29. Note the recording feature is an Inherent part of profiling.

In reference to claims 17-19 and 22, see the rejection of claims 9-13.

The patent to Alexander III et al. (6,604,210) is also considered pertinent to the applicant's disclosure; since, it also provides for turning profiling information on and off (col. 20 lines 60-65).

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Chavis whose telephone number is (571) 272-3720. The examiner can normally be reached on M-F, 7:30am-4:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JC

A handwritten signature in black ink, appearing to read 'John Chavis', with a stylized, cursive script.

John Chavis
Primary Examiner AU-2193